LIBRARY
REME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 18 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1969

No. 614

JOSEPH RICHARD WICK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

JEROME J. DUFF,
721 Olive Street,
St. Louis, Missouri 63101,
CHARLES M. SHAW,
Suite 311,
225 South Meramec,
Clayton, Missouri 63105,
Attorneys for Petitioner.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St., 63101 314-231-4477.

INDEX.

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Constitutional Provisions and Statutes Involved	2
Statement	3
Reasons for granting the Writ	4
Conclusion	5
Appendix A. Opinion of Court of Appeals, dated August 19, 1969	A-1
Appendix B. Testimony Relative to Assignment of Error	A-5

CITATIONS.

Cases.

Chapman v. California, 386 U. S. 18	4
Griffin v. California, 380 U. S. 609	4
Harrington v. California, 395 U. S. 250	5
Miranda v. Arizona, 384 U. S. 436	2, 4

Constitutional Provisions.

Constitution of the United States, Fifth Amendment	2

Statutes and Rules.

Rule 37 (c) of the Federal Rules of Criminal Procedure	2
18 U. S. C., Section 472	2, 3
28 U. S. C., Section 1254 (1)	2

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

No. .....

JOSEPH RICHARD WICK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

Joseph Richard Wick, your Petitioner, respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled cause on August 19, 1969.

OPINIONS BELOW.

This cause was decided by a panel of the United States Court of Appeals on August 19, 1969, in an opinion set out in Appendix A hereof.

JURISDICTION.

The judgment of the United States Court of Appeals was entered on August 19, 1969, and jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1), and Rule 37 (c) of the Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED.

Whether, under the Fifth Amendment of the Constitution of the United States, as interpreted by Miranda v. Arizona, 384 U. S. 436, 16 L. ed. 2d 694, 86 S. Ct. 1602, the prosecution may use at trial, the fact that a Defendant stood mute or claimed his privilege not to answer in the face of an accusation.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Fifth Amendment to Constitution of the United States:

> No person . . . shall be compelled in any criminal case to be a witness against himself.

Statutes of the United States:

> 18 U. S. C., Section 472 uttering counterfeit obligations or securities.

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent . . . keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000.00 or imprisoned not more than fifteen years, or both.

STATEMENT.

Petitioner was charged in a three count indictment for violation of Title 18, Section 472, U. S. C. as follows:

In Count I thereof he was charged with passing a counterfeit bill on August 11, 1966, in a certain men's store in Edwardsville, Illinois. In Count II thereof, Petitioner was charged with passing a counterfeit bill on the 11th day of August, 1966, in another transaction. In Count III thereof, Petitioner was charged with having in his possession 28 such counterfeit bills on August 11, 1966.

Petitioner was convicted of the two counts of passing counterfeit bills but was acquitted by the jury of being in possession of 28 falsely made and counterfeited obligations. He was not convicted on all three counts as is set out in the opinion of the Court of Appeals herein.

The facts material to the consideration of the question presented is that during the trial in the cause and during the direct examination of a United States Secret Service Agent, the government's attorney, over the objection by the Defendant, was allowed to ask the agent, "Do you recall any specific questions that were asked?" Answer: "Yes". Question: "Would you tell the Court and jury what those questions were and the answers, if you recall?" Answer: "He was asked where he obtained the counterfeit notes, and he refused to give an answer to that question."

The testimony relative to the assignment of error claimed, appear at pages 153, 154, and 155 of the Transcript and is set out in full in Appendix B attached hereto together with argument by the government relative thereto.

On August 19, 1969, the Court of Appeals for the Seventh Circuit held that it was error to introduce Defend-

ant's reliance on his Fifth Amendment privilege at the interrogation in the trial but found, nevertheless, that the error was harmless.

REASONS FOR GRANTING THE WRIT.

The Court of Appeals has rendered a decision which is in conflict with the holding of this Court in Miranda v. Arizona, supra and Griffin v. California, 380 U. S. 609. The question of whether or not Defendant's exercise of the Fifth Amendment right to refuse to answer a question, can be used against him and the question of whether or not that refusal may be commented upon by the government's attorney in his closing argument, are important questions of federal law which should be settled by this Court. This is even more so in light of the holding of the Circuit Court of Appeals for the Seventh Circuit wherein it admitted that the ruling was in error and then went on to say that the error was harmless. This appears to be a departure from the case of Chapman v. State of California, 386 U. S. 18, 17 L. ed. 2nd 705, 87 S. Ct. 824, which held, inter alia, that before an error involving the denial of the federal constitutional right to be held harmless in a state criminal case, the reviewing court must be satisfied beyond a reasonable doubt that the error did not contribute to the Defendant's conviction. The Circuit Court of Appeals for the Seventh Circuit takes the view that the other evidence was so overwhelming that it could not have contributed to the jury's verdict. Obviously, there was no overwhelming evidence because the jury acquitted Defendant on the count involving possession of the counterfeit bills. The Circuit Court of Appeals for the Seventh Circuit made certain other errors in its recitation of the facts, one being that the counterfeit bills were not found in the glove compartment of the automobile as it was being towed by a towing company and Defendant did not go into a certain card shop with one Joseph Foley who

was with him on the date in question. A reading of the facts in the case would indicate that the Circuit Court of Appeals of the Seventh Circuit has not fully acquainted itself with the facts of this cause and in so failing, has departed from accepted and usual course of judicial proceedings to that extent.

Harrington v. California (23 L. Ed. 2nd 284), 395 U. S. 250, which the court relied on involved a confession of a Co-Defendant and whether or not it can be used and if so, was the use prejudicial error. Further, the evidence in this case is not the overwhelming evidence referred to in Harrington v. California and involves a fundamental question, not of whether or not a confession of a Co-Defendant may be used, but whether or not a Defendant's silence can be used against him.

CONCLUSION.

Therefore, it is respectfully submitted that this petition for certiorari should be sustained.

Respectfully submitted,

JEROME J. DUFF,
721 Olive Street,
St. Louis, Missouri 63101,

CHARLES M. SHAW,
Suite 311,
225 South Meramec,
Clayton, Missouri 63105,
Attorneys for Petitioner.